**I & F Corporation and its Alter Ego, Priority III Contracting, Inc. *and* International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 8, AFL–CIO.** Case 9–CA–33006–1, –2

February 11, 1997

## DECISION AND ORDER

BY MEMBERS BROWNING, FOX, AND HIGGINS

On July 8, 1996, Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed cross-exceptions and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.[1]

### AMENDED REMEDY

The Charging Party has excepted to the judge's failure to clearly set forth that the remedy for the Respondent's failure to honor the collective-bargaining agreement is applicable to all bargaining unit employees employed by Priority III Contracting, Inc., from May 22, 1995, until the expiration of the 1993–1996 collective-bargaining agreement on June 30, 1996. We agree. The Respondent repudiated its collective-bargaining contract in violation of Section 8(a)(5). Had the Respondent not repudiated the contract, the contract would have been applied to all unit employees at Priority III Contracting, Inc., including both former I & F employees and those who had not previously worked for I & F Corporation. Therefore, the remedy should apply to all unit employees, and we shall modify the recommended Order accordingly. See *O'Neill, Ltd.*, 288 NLRB 1354 (1988), enfd. 965 F.2d 1522 (9th Cir. 1992).

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, I & F Corporation and its Alter Ego, Priority III Contracting, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraphs 2(a), (b), (c), and (d), insert the following paragraphs, and reletter the remaining paragraphs accordingly.

"(a) Restore and give full effect retroactively to the collective-bargaining agreement between I & F Corporation and the Union, including making all trust fund payments due under that agreement, and make all bargaining unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's repudiation of the contract, in the manner set forth in the remedy section of the judge's decision, as amended by the Board's decision.

"(b) Within 14 days from the date of this Order, offer Douglas Boggs, Clifford Bosken, Terry Brooks, John Brunner, Anthony Caraway, Ralph Carle, James Kain, Anthony Kuntz, Mark E. Kuntz, Kelvin McDowell, Stephen Moore, Kenneth P. Penn, Kevin J. Doerman, Dale Gloeckner, John Goodman, Joseph Hamilton Jr., Robert M. Hughes, Joel B. Junker, Lorraine Petrey, Diane Poggemann, Barry P. Rohrmeir, Gary Ross, Baron Spalding, Charles P. Stern, and James Wilson Jr., and all terminated I & F Corporation employees, including those rehired by Priority III Contracting, Inc., full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

"(c) Make all the employees referred to in paragraph (b) above whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

"(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

"(e) Furnish to the Union in a timely fashion the information requested by the Union in its letter dated May 26, 1995."

2. Substitute the attached notice for that of the administrative law judge.

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discourage membership in the Union by terminating union members employed by Respondent I & F Corporation because of their union member-

[1] We have modified the judge's recommended Order to require the Respondent to provide the Union with the information that it requested, without the necessity of making a new request.

ship or in any other manner discriminating against them with regard to their tenure of employment or any term or condition of employment.

WE WILL NOT solicit employees to abandon their employment as union members and accept nonunion employment.

WE WILL NOT fail and refuse to honor and apply to all unit employees the collective-bargaining agreement between I & F Corporation and the Union.

WE WILL NOT continue to repudiate the existing collective-bargaining agreement in effect between the parties.

WE WILL NOT deal directly with unit employees, soliciting them to abandon their union employment and accept employment without union representation.

WE WILL NOT fail and refuse to make fund contributions as required by the existing collective-bargaining agreement with the Union.

WE WILL NOT fail and refuse to furnish information relevant and necessary to the Union as the collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore and give full effect retroactively to the collective-bargaining agreement between I & F Corporation and the Union, including making all trust fund payments due under that agreement, and make all bargaining unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's repudiation of the contract, in the manner set forth in the remedy section of the judge's decision, as amended by the Board's decision.

WE WILL, within 14 days from the date of the Board's Order, offer Douglas Boggs, Clifford Bosken, Terry Brooks, John Brunner, Anthony Caraway, Ralph Carle, James Kain, Anthony Kuntz, Mark E. Kuntz, Kelvin McDowell, Stephen Moore, Kenneth P. Penn, Kevin J. Doerman, Dale Gloeckner, John Goodman, Joseph Hamilton Jr., Robert M. Hughes, Joel B. Junker, Lorraine Petrey, Diane Poggemann, Barry P. Rohrmeir, Gary Ross, Baron Spalding, Charles P. Stern and James Wilson Jr., and all terminated I & F Union employees, including those rehired by Priority III Contracting, Inc., full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make all the employees listed in the previous paragraph whole for any loss of earnings, and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of the employees listed above, and WE WILL, within 3 days thereafter, notify each of them that this has been done and that the discharges will not be used against them in any way.

WE WILL furnish to the Union in a timely fashion the information requested by the Union in its letter dated May 26, 1995.

## I & F CORPORATION AND ITS ALTER EGO, PRIORITY III CONTRACTING INC.

*Carol L. Shore, Esq.*, for the General Counsel.
*Thomas R. Yocum, Esq.*, of Cincinnati, Ohio, for the Respondents.
*Gary Moore Eby, Esq.*, of Cincinnati, Ohio, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. Upon charges filed by International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 8, AFL–CIO (the Union or Charging Party), a complaint and notice of hearing and an amended complaint and notice of hearing issued respectively on August 4 and 29, 1995, alleging that I & F Corporation (I & F), and its alter ego, Priority III Contracting, Inc. (Priority; and collectively Respondents) violated Section 8(a)(1) of the Act by encouraging employees to abandon their employment with I & F, an organized employer, to become employed by Priority, a nonunion employer. Further, that Priority is a subordinate instrument and a disguised continuance of I & F, and that I & F and Priority are alter egos and a single employer within the meaning of the Act. The consolidated complaint further alleges that Respondents unlawfully terminated various employees and that Respondents also violated Section 8(a)(5) of the Act by repudiating the existing collective-bargaining agreement with the Union and by refusing to make contributions into the Union's trust funds as required by the collective-bargaining agreement. Additional 8(a)(5) violations are alleged by Respondents' dealing directly with employees by urging them to work without union representation under wages, hours, and conditions of employment established by Priority and refusing to furnish information to the Union which is necessary and relevant to its duties as the exclusive collective-bargaining representative of the unit employees. Pursuant to notice, a hearing was held before me on March 4 and 5, 1996. Briefs have been timely filed by the General Counsel, the Charging Party, and Respondents, which have been duly considered.[1]

[1] Par. 7(b) of the amended complaint was amended at the hearing to delete the names Linda S. Blair, Donald D. Cooley, Robert Kuntz, Stephen Kuntz, and Geralyn Gunther. Pars. 8(b) and (c) were amended to substitute "1978" for "1971," and par. 10(a) was amended to substitute "May 26, 1995," for "May 22, 1995."

## FINDINGS OF FACT

### I. EMPLOYER'S BUSINESS

I & F, at all times material, has been a corporation engaged as an insulation contractor in construction industry doing commercial, industrial and office construction, with offices in Cincinnati, Ohio. At the hearing, the parties stipulated that I & F, during the period August 24 to May 1994 purchased and received materials and supplies valued in excess of $50,000 from outside the State of Ohio. At the hearing, Priority admitted that it is a corporation engaged as an insulation contractor in the construction industry doing commercial, industrial, and office construction with offices in Cincinnati, Ohio, and that Priority, since May 22, 1995, has performed services valued in excess of $50,000 in States other than the State of Ohio, and that it is an employer within the meaning of the Act. Accordingly, I conclude that both I & F and Priority are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. LABOR ORGANIZATION

The complaint alleges, the Respondents at the hearing admitted, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *Facts*

I & F was wholly owned by its president, Grant Kirby. It began operating in 1971 and incorporated in about 1978, when it joined the Master Insulators Association of Cincinnati, Ohio, and Vicinity (the Association). Thereafter, the Association negotiated on behalf of its members, including I & F, collective-bargaining agreements with the Union. Grant Kirby participated in negotiating some of these contracts. In recent years, Kirby participated on behalf of the Association in wage and pension fund discussions with the Union. Kirby has also held office in the Association. Despite the fact that no document was produced assigning to the Association authority to bargain on behalf of its members, it is undisputed that these collective-bargaining agreements were honored by the employer-members of the Association, including I & F.[2] The contract contains a union-security provision making union membership a condition of employment.

In about February 1995,[3] the Union's business agent, William Carter, was approached by David Fries, project manager for I & F, seeking reductions in the wage rates in the current association contract. A meeting was held at about that time attended by Fries, Ray Markus, field superintendent for I & F, and Carter. Nothing of substance was resolved, and Carter suggested that any future meetings about wage concessions be conducted on an Association rather than individual employer basis.

By letter dated February 21, Fries sent a followup letter to Carter, again requesting relief from the contractual wage rates and noting the possibility of a corporate reorganization, "so we can stay in business," and attaching a list purporting to be nonunion contractors working in the area in 1993 who were "taking our work." By letter dated February 23, Carter responded that wage discussions should be raised as a part of the discussions with the Association and requested complete information concerning the details of the "reorganization" referred to in Fries' February 21 letter.

About 2 months later, by letter dated April 19, Fries wrote to Carter:

> I & F Corporation dropped out of the Master Insulators Group. This leaves us without a contract with Local 8. We would like to schedule a meeting with you to discuss an agreement with Local 8.

Carter, by letter dated April 24, protested that without regard to its withdrawal from the Association, I & F was bound to observe the terms and conditions of the current Association collective-bargaining agreement until its expiration on July 1.

By letter dated April 27, Fries responded, in relevant part:

> To answer your letter, no, we do not feel we have a contract with Local 8. Even if we do, the economy is such that there is a need to re-negotiate certain terms and conditions that apply to the market. If we have a contract or not, we do not intend to renew or extend the terms and conditions of the current contract you have with the Master Insulators.

Attached to Fries letter of April 27 was a letter dated April 19 to Dave Black, president of the Association, stating: "To confirm our conversation last month, I & F Corporation is terminating our membership in this association."

By letter dated May 5, Carter advised Fries that the Union was taking the position that I & F's repudiation of the current collective-bargaining agreement was unlawful and that if I & F persisted in that position, the Union would, on May 10, file unfair labor practice charges with the Board and take whatever other legal action it deemed necessary,

On about May 19, and for about 2 weeks prior, both Brian Kirby, son of Grant Kirby and employed as a sales estimator by I & F, and Markus spoke to some 25 union members at various jobsites and advised them that on Monday, May 22, a new nonunion company, Priority, would be taking over for I & F and offered them nonunion employment with Priority. Most of those offered the employment with Priority declined. Some, however, about five or six, did accept and began working for Priority on the following Monday, May 22. Others came to work for Priority at later dates. Brian Kirby testified that it was understood that those accepting employment with Priority would have to resign their union membership.

With respect to the formation of Priority, it appears that on January 5, Grant Kirby, acting in his capacity as president

[2] The introductory paragraph of the most recent contract, effective July 1, 1993, through June 30, 1996, reads:

> This Agreement made and entered into the first (1st) day of July, 1993, by and between the Master Insulators Association of Cincinnati Ohio and Vicinity on behalf of its members (the Employer Association) and the International Association of Heat and Frost Insulators and Asbestos Workers Local #8 of Cincinnati Ohio (the Union).

[3] All dates refer to 1995 unless otherwise indicated.

of I & F, and Brian Kirby, his son, as president of Priority,[4] signed an "Asset Purchase Agreement" providing for the sale of the physical assets of I & F to Priority for $300,000. Arrangements for the sale were made by Edward Collins, secretary of I & F Corporation, who was also the accountant for I & F and now works for Priority, doing the tax work for both corporations. Brian Kirby testified that Priority, while incorporated in January, was not actually activated until May 22 when it began operations. Brian Kirby testified that he had borrowed the full amount of the purchase price from his father and took out no other loan, however the record contains no documentation for any loan from Grant Kirby to Brian Kirby. Brian Kirby could not recall payment of the $300,000 purchase price recited in the sales agreement nor could he recall making any loan repayments to his father, at least as of December 1995.

The sale of I & F consisted of the following assets:

1. Inventory materials and supplies
2. Office furniture
3. Construction equipment
4. Vehicles

The real estate upon which the business is located, including office and warehouse, continued to be owned by Grant Kirby and is leased to Brian Kirby for $2950 per month.

Grant Kirby continues in the employ of Priority as a consultant. While Grant Kirby testified that he is not paid for this work, the record discloses that his health insurance coverage is paid by Priority and that he and Priority alternate making payments on his leased auto.

Priority operates out of the same facility formerly occupied by I & F, including office and warehouse facilities. Priority's address, telephone number, and fax numbers are the same as those previously used by I & F.

Grant Kirby uses the same office space he had previously occupied with I & F, works out of that office on a daily basis, and uses the same secretarial assistance.

Grant Kirby also has the authority to pledge the credit of Priority as evidenced by a Priority check on a Merrill Lynch account signed by Grant Kirby, dated June 28.

It is undisputed that Priority does the same type of insulation work done by I & F. At the time of the transfer of operations on May 22, Priority's only customers were I & F customers. Those customers were notified that Priority would be completing any job in progress on behalf of I & F.

With respect to those accounts receivable for work in progress at the time operations were transferred, by letter from Grant Kirby to Brian Kirby dated May 19, I & F represented that it would pay Priority $631,118.49 for completing the work under contract with I & F. However, Brian Kirby not aware of payments being made to Priority.

With respect to the corporate hierarchy at I & F, it appears that Grant Kirby was the president and sole shareholder. Brian Kirby was a salesman/project manager; Fries was vice-president, estimator/engineer; Markus was a labor superintendent or field superintendent; Tom Schroeder was a project manager; James Stern was a project manager; William Caraway was warehouse manager; and Barbara Rohe was office manager. It is undisputed that after the transfer work on May 22, all of these individuals continued to work for Priority in essentially the same capacities that they occupied with I & F.

During the period of time from the date of the sale on January 5 until I & F actually transferred its insulation work to Priority on May 22, I & F continued to operate, using the equipment ostensibly sold to Priority on January 5 without making any payment to Priority. Brian Kirby testified that there was "no particular reason" for this.

Grant Kirby testified that he has made contractually obligated payments under the association contract to the various funds set out therein. However, it is undisputed that no payments have been made to those funds since the transfer of operations to Priority on May 22.

A few days after the change to Priority on May 22, the Union, by letter dated May 26 from Carter to Brian Kirby, requested certain information set out in an attachment to that letter. The information sought concerned the purported sale and transfer of assets from I & F to Priority to determine the corporate relationship between Priority and I & F. This information was not provided.

With respect to the matter of arbitration, the association contract contains grievance and arbitration provisions. By letter dated June 9, after the unfair labor practices had been filed with the NLRB, counsel for Respondents wrote to counsel for the Union the following letter:

> This will acknowledge receipt of your fax correspondence dated June 9, 1995, along with the enclosed Asbestos Workers Agreement. Although I&F Corporation does not concede that it is bound by said Agreement, we understand that Local #8 has asserted various claims against I&F Corp. based upon this Agreement, including, but not limited to, charges of alleged unfair labor practices asserted before the National Labor Relations Board in Case No. 9-CA-32899.
>
> To the extent that the Asbestos Workers Agreement dated March 24, 1994 may be applicable, then I&F Corporation hereby demands arbitration in accordance with Article XVIII of the Agreement.
>
> In particular, I&F Corporation deems the actions of Local #8 in filing the unfair labor practice charge to be an attempted circumvention of the arbitration procedures set forth in the Agreement.
>
> Be further advised that I&F Corporation has other claims against Local #8 which it intends to raise as a part of the arbitration proceeding. Further detail regarding these claims will be forthcoming shortly.

It is undisputed that the Union has declined to file contract grievances concerning any of the matters for which it presently seeks relief under the National Labor Relations Act.

### B. *Discussion and Analysis*

#### 1. Withdrawal from the Association and repudiation of the association contract

The record discloses that during the term of the existing contract, having failed to obtain the wage concessions sought from the Union, I & F withdrew from the Association and repudiated the association contract. Under existing Board and

[4] While Brian Kirby was employed by I & F, he apparently owned none of its stock, although he held some office in I & F which he could not recall.

court law, withdrawal from membership in a multiemployer association does not normally relieve an employer from its obligations under a labor agreement negotiated on behalf of the association members. *Carthage Sheet Metal Co.*, 286 NLRB 1249 (1987).

Respondents herein contend that they had no obligation to honor the association contract because they had never executed any agreement authorizing the Association to negotiate on their behalf. This Company, from its inception in 1971, had been a member of the Association. I & F, through Grant Kirby, had been involved in some of the negotiations leading to the association contracts. Grant Kirby testified that he had always considered himself bound by and had observed these contracts, including the present contract, When I & F failed to secure the concessions it sought from the Union, it withdrew its membership from the Association and refused thereafter to honor the contract despite the fact that the contract did not expire until June 30, 1996.

In these circumstances, I conclude that I & F was bound by the terms of the association contract until June 30, 1996, and that its repudiation of the labor agreement was unlawful under Section 8(a)(5) of the Act. *Twin City Garage Door Co.*, 297 NLRB 119 (1989).

2. Alter ego status

The basic issue to be resolved in this case is whether I & F and Priority are truly separate and distinct legal entities or actually alter egos, and therefore jointly and severally responsible to remedy any unfair labor practices. In reviewing the alter ego issue, the Board and the courts have held that while no single factor is conclusive, various factors, when present, determine alter ego status. Among those factors are "substantial identity of management, business property, operation, equipment, customers, supervision and ownership." *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 553–554 (3d Cir. 1983), cert. denied 464 U.S. 1039 (1984). Alter ego status is also suggested by the lack of an "arm's-length" relationship and the continuation of the same product or operation under a different name with the same individuals, and no substantial change in the nature of the work. See *NLRB v. Deena Artware.*, 361 U.S. 398, 403–404 (1960).

The Board also considers whether or not the facts disclose any attempts by the companies involved to evade statutory responsibilities under the Act or the remedial effect of unfair labor practices. *Fugazy Continental Corp. v. NLRB*, 725 F.2d 1416, 1419 (D.C. Cir. 1984).

In light of this guidance, an examination of the record in this case makes it abundantly clear that Priority is not a separate entity but essentially a disguised continuance of I & F, established for the purpose of circumventing the wage provisions of the Association collective-bargaining agreement to which I & F was obligated. Priority was established as a nonunion employer in order to obtain the financial relief that I & F had been unsuccessful in wresting from the Union.

I am satisfied that Grant Kirby, president and owner of I & F since 1971, went to the Union looking for wage relief from its commitment under the association contract. When the Union declined, Priority was established as a vehicle to accomplish what I & F had failed to do. The sale was from father to son, and the facts show that it was anything but an arms-length transaction. As set out above, all the money for the sale was in the form of an intrafamily loan from father to son. This alone is suspect, and no documentary evidence of this loan was ever produced at the hearing nor, insofar as the record discloses, has there been any repayment of the loan.

Grant Kirby retained ownership of the real estate, office, and warehouse buildings which he leases to Priority. The record further shows that Grant Kirby continues in the employ of Priority as a consultant at the same location, address, and fax number, with the same office and staff, where he works every day. Grant Kirby's health insurance is paid for by Priority, and Priority makes half of the lease payments on Grant Kirby's auto.

After the sale, virtually the entire management and many of the employees were retained by Priority and the same work was performed in the same manner. At the time of the sale, the only jobs Priority had were those in progress taken over from I & F.

Unaccountably, even though title to the equipment and vehicles were transferred from I & F to Priority at the time of the sale on January 5, I & F paid nothing to Priority for the use of those items for more than 4 months while it used them before Priority took over the I & F jobs on May 22.

For these reasons, and based on the entire record, it is clear to me that the sale was a sham and that Priority was essentially a disguised continuance of I & F created in effort to avoid the financial obligations of the association contract to which I & F was bound.

3. Terminations on May 19

As noted above, I & F, apparently experiencing financial difficulty, went to the Union to seek relief, despite the fact that its employees were represented under a multiemployer association contract. When the economic relief it sought was denied by the Union, I & F withdrew from the Association, repudiated the association contract and solicited a few I & F employees to work as nonunion employees with the new nonunion replacement corporation called Priority. The other I & F union employees were terminated and not offered employment with Priority.

In my opinion, all the employees terminated by I & F on May 19 are entitled to reinstatement and backpay for the reason that their discharges were discriminatory in violation of Section 8(a)(3) of the Act. The motivation for these discharges was the desire by I & F to operate with nonunion employees unencumbered by the economic provisions of the association contract. Clearly, the discharges were motivated by antiunion considerations.[5]

4. Solicitation to reject union representation

It is undisputed that during the period preceding the transfer of operations from I & F to Priority, both Brian Kirby and Markus visited jobsites where they advised various union member-employees that a new company would be taking over the operations and that the new company would be nonunion. Upon their employment with Priority, they would be expected to resign their union memberships. They were also advised of the wages and benefits they could expect with the

[5] In addition, those few I & F union employees employed by Priority are also entitled to be made whole for any loss of contractual wages or benefits they may have suffered after the unlawful repudiation of the contract.

nonunion company. These conversations clearly interfered with their rights under Section 8(a)(1) of the Act to become and remain members of the Union without employer interference. In addition, those conversations violated Section 8(a)(5) of the Act since they constituted attempts to deal directly with employees concerning wages, hours, and terms and conditions of employment at a time when the employer was obligated to consult and bargain only with the Union as the collective-bargaining representative of the employees with respect to those matters. *Watt Electric Co.*, 273 NLRB 655, 659 (1984).

### 5. Refusal to furnish information

As set out above, the Union requested information from Brian Kirby concerning the sale of I & F, whose employees the Union represented, to Priority whose employees would not be represented by the Union. This sale raised matters of legitimate concern regarding the Union's continuing status as collective-bargaining representative of Priority's employees under the existing association collective-bargaining agreement. The Union would have been remiss in its duty to represent these unit employee-members under that labor agreement if it had not attempted to pursue the matter and to gather information for that purpose. This information was necessary and relevant to the Union in discharging its obligation as collective-bargaining representative of the unit employees. Accordingly, I conclude that the Respondents failed and refused to provide this information in violation of their collective-bargaining duties under Section 8(a)(5) of the Act. *Construction Labor Unlimited*, 312 NLRB 364, 368 (1993).

### 6. Arbitration

Respondents have contended that the Union has a contractual obligation to grieve and arbitrate the substance of the allegations set out in this complaint. I do not agree. First, the Respondents repudiated the contract, including, presumably, the grievance and arbitration provisions of that contract. It is inconsistent for Respondents to both deny that they are bound by the contract and at the same time insist that the Union grieve and arbitrate disputes arising under it.[6] To accept this contention would be to hold that the Respondents could repudiate the contract and at the same time insist that the Union abide by its grievance and arbitration provisions.

In any event, the Board will not defer to the grievance and arbitration provisions of a contract in circumstances where the issue involves the basic question of recognition or the repudiation of the entire contract. *Edward J. White, Inc.*, 237 NLRB 1020 (1978).

## IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent as set forth in section III above, in connection with Respondents' operations described in section I above, have a close and intimate relationship to traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## THE REMEDY

I have concluded that Priority is simply a disguised continuance of I & F and its alter ego. I further conclude that both are jointly and severally liable to remedy the unfair labor practices found herein. Any appropriate relief must include a restoration of the status quo ante as it existed prior to the unlawful repudiation of the association contract by I & F, the unlawful terminations of the I & F union member-employees and the unlawful unilateral imposition of changes in wages, hours, and working conditions by Priority. All those employees who were terminated from I & F on April 19 are entitled to backpay, reinstatement and all contractual benefits due to them beginning from the date of their discharges. This also includes those I & F employees subsequently employed by Priority to the extent that they have been denied the wages or benefits provided under the existing collective-bargaining agreement.

Any loss of earnings or other benefits suffered as a result of Respondent's failure to apply to its unit employees the collective-bargaining agreement between the Union and Respondent I & F shall be paid as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest thereon computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[7]

Any amounts that Respondents must pay into the benefit funds of the contract shall be determined in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), and reimbursement of employees for any losses or expenses they may have incurred because of Respondent's failure to make payments to those funds in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon as prescribed in *New Horizons for the Retarded*, supra.

In its brief, Respondent states that since the association contract is a pre-hire agreement, Respondent's bargaining obligation ends with the expiration of the contract on June 30, 1996, under *Deklewa*,[8] and it does not seek a bargaining order beyond that date. I agree.

## CONCLUSIONS OF LAW

1. Respondent I & F and Respondent Priority each individually meet the Board's jurisdictional standards and are alter egos and an Employer engaged in commerce with the meaning of Section 2(6) and (7) of the Act.

2. International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 8, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit contained in the current collective-bargaining agreement between the parties is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All employees of Respondents engaged in the preparation, fabrication, alteration, application, erection, as-

[6] Even in its demand for arbitration in its letter of June 9, I & F did not concede that the contract applies but made its demand, "to the extent that the Asbestos Workers Agreement dated March 24, 1994, may be applicable, then I & F corporation hereby demands arbitration in accordance with Article XVIII of the Agreement."

[7] Since the record does not adequately identify all employees entitled to be made whole, that determination shall be made at the compliance stage of this proceeding.

[8] *John Deklewa & Sons*, 282 NLRB 1375 (1987).

sembling, molding, spraying, pouring, mixing, hanging, adjusting, repairing, dismantling, removing, reconditioning, maintenance, sealing, finishing and/or weatherproofing of cold or hot thermal insulation.

4. At all times material herein, the Union has been and is now the exclusive representative of the employees in the above-described bargaining unit for the purposes of collective bargaining within the meaning of Section 8(f) of the Act.

5. Respondents and the Union were parties to a collective-bargaining agreement effective July 1, 1993, through June 30, 1996.

6. By soliciting employees to abandon their employment as union members and accept nonunion employment, Respondents violated Section 8(a)(1) of the Act.

7. By terminating those union members employed by Respondent I & F on May 19, 1995, because of their union membership, Respondents violated Section 8(a)(3) of the Act.

8. By repudiating the current collective-bargaining agreement in effect between the parties, and unilaterally implementing new terms and conditions of employment, Respondents have violated Section 8(a)(5) of the Act.

9. By dealing directly with employees, soliciting them to abandon their union employment and accept employment without union representation, Respondents violated Section 8(a)(5) of the Act.

10. By failing and refusing, since April 19, 1995, to make contributions as required by the existing collective-bargaining agreement, Respondent violated Section 8(a)(5) of the Act.

11. By failing and refusing to furnish information relevant and necessary to the Union's responsibility as bargaining representative of the unit employees, Respondent violated Section 8(a)(5) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

## ORDER

The Respondents, alter ego corporations I & F Corporation and Priority III Contracting, Inc., their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in the Union by terminating union members employed by Respondent I & F on May 19, 1995, because of their union membership or in any other manner discriminating against them with regard to their tenure of employment or any term or condition of employment.

(b) Soliciting employees to abandon their employment as union members and accept nonunion employment.

(c) Failing and refusing to honor and apply to unit employees the collective-bargaining agreement between I & F and the Union.

(d) Repudiating the existing collective-bargaining agreement in effect between the parties.

(e) Dealing directly with unit employees, soliciting them to abandon their union employment and accept employment without union representation.

(f) Failing and refusing to make fund contributions as required by the existing collective-bargaining agreement with the Union.

(g) Failing and refusing to furnish information relevant and necessary to the Union as the collective-bargaining representative of the unit employees.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following action designed to effectuate the policies of the Act:

(a) Restore and give full effect retroactively to the collective-bargaining agreement between I & F Corporation and the Union, including making all trust fund payments due under that agreement.

(b) Within 14 days from the date of this Order, offer to Douglas Boggs, Clifford Bosken, Terry Brooks, John Brunner, Anthony Caraway, Ralph Carle, James Kain, Anthony Kuntz, Mark E. Kuntz, Kelvin McDowell, Stephen Moore, Kenneth P. Penn, Kevin J. Doerman, Dale Gloeckner, John Goodman, Joseph Hamilton Jr., Robert M. Hughes, Joel B. Junker, Lorraine Petrey, Diane Poggemann, Barry P. Rohrmeir, Gary Ross, Baron Spalding, Charles P. Stern and James Wilson Jr., and all terminated I & F union employees, including those rehired by Priority, immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or their rights and privileges previously enjoyed, and make them whole for any loss of wages or other contractual benefits they may have suffered by reason of the discrimination against them found herein, to be computed in conformity with the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and, within 10 days thereafter, notify the employees, in writing, that this has been done and that the discharges will not be used against them in any way.

(d) On request, provide to the Union information concerning the purchase of I & F Corporation by Priority III Contracting, Inc.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security records and reports, and all other records necessary to analyze the amounts of backpay due herein.

(f) Within 14 days after service by the Region, post at its operations in Cincinnati, Ohio, copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 9, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, Respondents have gone out of business or closed down the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since June 15, 1995.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondents have taken to comply.